

CAUSE NO. _____

**TERRY GREGORY PEDEN,
INDIVIDUALLY, AND THE ESTATE
OF TAMMY E. HENDERSON PEDEN,
DECEASED, BY AND THROUGH ITS
ADMINISTRATOR, TERRY GREGORY
PEDEN,**

Plaintiffs

V.

REGINALD E. MCKAMIE, SR.,
Defendant

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION & REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURTS

NOW COMES, TERRY GREGORY PEDEN, INDIVIDUALLY, AND THE ESTATE OF TAMMY E. HENDERSON PEDEN, DECEASED, BY AND THROUGH ITS ADMINISTRATOR, TERRY GREGORY PEDEN, hereafter called Plaintiffs, and in this Original Petition complaining of REGINALD E. MCKAMIE, SR., hereafter called Defendant, would show the following:

I. **DISCOVERY**

Discovery in this case shall be governed by Rule 190.3, Texas Rules of Civil Procedure (Level 2).

II.

JURISDICTION & VENUE

This Court has jurisdiction and venue over this case and the parties because all the acts and omissions giving rise to Plaintiff's claim occurred in Harris County, Texas, and the amount in controversy is within the jurisdictional limits of the Court.

III.
CONDITIONS PRECEDENT

Any and all conditions precedent to the Plaintiffs' right to file and prosecute this claim have been satisfied.

IV.
PARTIES

Plaintiff, **TERRY GREGORY PEDEN**, is a resident of Brazoria County, Texas who resides at 6910 Spring Run Ln., Katy, Texas 77494. The last three digits of his social security number are 222 and the last three digits of his Texas driver's license are 835.

THE ESTATE OF TAMMY HENDERSON PEDEN, DECEASED, brings this action by and through its court appointed administrator, Terry Gregory Peden.

Defendant, **REGINALD E. MCKAMIE, SR.**, is a resident of Harris County, Texas **who may be served with process at his principle place of business, to wit, 1900 W. Gray St., Unit 131558, Houston, Texas 77219.**

V.
FACTS AND CAUSE OF ACTION

Tammy Henderson Peden underwent a gastric band surgical procedure in 2007, for the purpose of losing weight. The gastric band procedure was performed by Felix Spiegel, MD. Following the procedure, for a period of 7 to 8 years, Tammy Henderson Peden complained of significant abdominal pain. In an effort to treat the abdominal pain, Mrs. Peden underwent three additional surgical procedures which included of a hysterectomy and removal of the gastric band.

Tammy Peden discovered, in 2017, that following the 2007 gastric band

procedure, Dr. Spiegel had negligently left a plastic catheter and plastic tubing inside her body. Between Dr. Spiegel's gastric band procedure and Mrs. Peden's 2017 discovery of the plastic catheter and tubing, she made numerous visits to her doctors at Kelsey-Seybold Clinic in an effort to determine or diagnose the cause of her pain. Despite these diligent efforts to determine the source and cause of her pain, Mrs. Peden did not, and through the exercise of reasonable diligence, could not identify or determine the cause of her pain until a pelvic CT scan performed at Kelsey-Seybold Clinic in 2017, confirmed the presence of the plastic catheter and tubing, at which point, on February 2, 2017, surgery was performed to remove the plastic catheter and tubing, which, by then, had become imbedded and encased in hardened scar tissue.

Plaintiff, who herself was a practicing attorney, filed suit against Dr. Felix Spiegel, MD on March 21, 2017, which was within the ten year statute of repose codified in Section 74.251(b) of the Texas Civil Practice & Remedies Code. Unfortunately, Tammy Henderson Peden died on April 18, 2017.

Following her death, Defendant was retained by Terry Gregory Peden, Tammy Peden's surviving husband and court appointed administrator of the Estate, to resume the prosecution of her claim against Dr. Spiegel. Rather than resume prosecution of the claim, Defendant voluntarily dismissed or non-suited the case on July 6, 2017, after it was too late for the claim to be refiled. Defendant dismissed the case because he was either unaware of the Texas statute of repose codified in Section 74.251(b) of the Texas Civil Practice & Remedies Code or erroneously believed the suit could be refiled and prosecuted after the 10 year deadline. Defendant, by his own

admission, did not know that the “*discovery rule*” would not allow the filing of any malpractice claim in Texas after 10 years following the negligent act. Defendant also mistakenly believed that the discovery rule, if applicable, would allow him to file or refile Mrs. Peden’s suit within two years of her discovery of Dr. Spiegel’s negligence. This was also incorrect.

In that, the 10 year statute of repose had been enacted in 2003, 14 years before Defendant dismissed Mrs. Peden’s claim, Plaintiffs contend that Defendant’s conduct amounts to gross negligence entitling Plaintiffs to exemplary damages.

Plaintiffs further contend that the reasonable value of Mrs. Peden’s now lost claim, was approximately \$350,000.00.

VI.

Plaintiffs contend that their injury and damage were proximately caused by the following conduct by Defendant, all of which amounts to negligence, gross negligence, and breach of contract. Plaintiffs specifically contend as follows:

(A) **BREACH OF CONTRACT**

The Estate of Tammy Peden, deceased, and Terry Gregory Peden individually and as representative of said decedent’s Estate, contend that Defendant breached the contract of employment by:

1. Not having or exercising the requisite skill, experience, or knowledge of substantive law to effectively represent Plaintiffs contrary to the representations in Defendant’s contract;
2. Defendant failed to apply, utilize, or exercise the skill, experience, and legal knowledge to effectively represent Plaintiff in the medical malpractice case;

3. Defendant misrepresented to Plaintiffs that he did have, and would apply the skill, experience, and legal knowledge to effectively represent Plaintiff's interest in the medical malpractice case for which he was employed;

(B) NEGLIGENCE & GROSS NEGLIGENCE

4. Defendant, in dismissing Plaintiff's pending and timely filed malpractice claim, failed to exercise that degree of care and skill that a reasonably prudent attorney exercising ordinary care would have exercised in the same or similar circumstances;
5. Defendant acted recklessly in dismissing Plaintiff's claim without first conducting the legal research necessary to determine whether or not Chapter 74 of the Texas Healthcare Liability Act would allow the filing of a claim after 10 years following the act or omission giving rise to the claim;
6. Failing to attempt to obtain a qualified medical expert to evaluate the claim during the three months between being hired and deciding to dismiss the case; and
7. Misinforming and/or erroneously leading Plaintiff to believe that the claim could be dismissed and refiled within two years after the foreign object had been discovered.

**VII.
DAMAGES**

As a direct and proximate result of Defendant's above mentioned conduct Plaintiffs have suffered the following damage:

1. The loss of Plaintiff's healthcare liability claim reasonably valued at \$350,000.00; and
2. Reasonable and necessary attorney fees and expenses incurred to prosecute this breach of contract claim against Defendant.

**VIII.
REQUEST FOR DISCLOSURE**

Under Texas Rule of Civil Procedure 194, Plaintiffs request that Defendant disclose, within (50) days of service of this request, the information or material described in Texas Rules of Civil Procedure 194.2(a-l).

IX.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited to appear and answer, and following trial on the merits, that judgment be rendered in favor of Plaintiffs and against Defendant for the following:

1. All actual damage supported by the evidence;
2. Exemplary damages;
3. Reasonable and necessary attorney fees and expenses;
4. Pre-judgment interest and post-judgment interest; and
5. The taxable cost of this action.

RESPECTFULLY SUBMITTED,

S. A. RANDLE & ASSOCIATES, P.C.

/s/ Sarnie A. Randle, Jr.

SARNIE A. RANDLE, JR.

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